

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA**

**EASTERN ZONAL BENCH: KOLKATA**

**Appeal No. E/499/2009**

**(Arising out of Order-in-Appeal No. 37/RAN/2009 dated  
30/06/2009 passed by Commissioner of Central Excise,  
Ranchi)**

The Waxpol Industries Ltd.

Appellant (s)

Vs.

Commr. of Central Excise-Ranchi

Respondent (s)

**Appearance**

Smt. Shilpi Bajoria, CA for the Appellant

Shri S. S. Chattopadhyay, Suptd. (A. R.) for the Revenue

**CORAM:**

**HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)**

**HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)**

**Date of Hearing-20.12.2018**

**ORDER NO. FO/77238/2018**

**PER BENCH**

The present appeal is against the Order-in-Appeal No. 37/RAN/2009 dated 30/06/2009. The appellant is engaged in the manufacture of various types of polish such as Floor Polish, Auto Polish, Scooter Polish, Rubbing compound, Vinyl Polish e.t.c. These goods are falling under Chapter 34 of the Central Excise Tariff Act, 1985 and are notified under Section 4A of the C. Ex. Act, 1944 for MRP based assessment. Central Excise duty is to be paid at the specified rate on the basis of MRP. The disputes in the present case cover the period 01/07/2001 to 30/07/2003. The issue in dispute is as follows:-

- (i) The appellant had collected 'handling charges' from wholesale customers and showed the same in the invoices issued by them. Revenue was of the view that since such charges were collected over and above the trade rate

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charged; Central Excise Duty will be required to be paid by including the same.

- (ii) Metal containers required for packing polish are manufactured and captively consumed. In addition to the captive consumption for packing and removing of polish, a part of the metal containers manufactured is stock transferred to their sister unit situated at Ranchi. Central Excise Duty was paid on such clearances on the basis of the value of goods ascertained by appellant on the basis of cost of raw material for the prior period. Revenue disputed the valuation adopted and was of the view that value was required to be determined on the basis of CAS-4 standards and accordingly proceeded to re-determine the proper value.
- (iii) The differential duty worked out on the above two issues was demanded from the assessee and the same was ordered to be paid by both the authorities below. This demand is under challenge in the present proceedings.
2. The appellant is represented by Smt. Shilpi Bajoria, Ld. CA and Revenue by Shri S. S. Chattopadhyay, Ld. DR.
3. The arguments advanced on behalf of the appellant by the Ld. CA are summarized below:-
- (i) On the issue of handling charges, she submitted that the goods were under MRP assessment under Section 4A. In respect

of those Commodities, Notified for MRP based assessment, the duty is required to be paid only on the basis of MRP less abatement. Revenue is not required to consider the actual amount recovered from the customers. As such, she submitted that there is no basis for demand of differential duty by adding the 'handling charges'. In respect of clearances of metal containers on stock transfer basis. It is her submission that the Central Excise Duty paid by the appellant in one unit is availed as Cenvat Credit by the other unit belonging to the same manufacturer. She submitted that this is entirely a Revenue Neutral Exercise, and hence, there is no basis to raise demand by way of differential duty alleging under valuation. In any case, she submitted that the Revenue has no basis to raise such demand by invoking the extended period of limitation.

4. The Ld. DR justified the impugned order.
5. Heard both sides and perused the appeal record.
6. Initially we examine the dispute with reference to handling charges. It is not in dispute that the goods are specified for MRP based assessment in the Notification issued under Section 4A. In respect of goods notified under this section, duty is required to be paid only on the basis of MRP affixed by the manufacturer less allowed abatement. In respect of such goods, the actual amount recovered from the customers is relevant. Consequently, we find no basis for the Revenue to demand differential duty by adding the handling charges to the

amount recovered through trade invoices. Hence, we find no basis for demand of differential duty on handling charges, which is set aside.

7. The second issue is with reference to valuation of empty metal containers which are stock transferred to the other unit of the appellant. No doubt, Central Excise Duty is paid on the basis of value ascertained for such containers. Revenue is of the view that the valuation adopted by the appellant is not proper. They have proceeded to determine the appropriate value and demand differential duty. We find considerable force in argument advanced by the Ld. CA that this is a case of Revenue Neutrality. The duty paid by the appellant is availed entirely as Cenvat Credit by the receiving unit. Under these circumstances, it cannot be said that the appellant indulged in conscious under-valuation with a view to evade Central Excise Duty.

8. We find that Chennai Bench of the Tribunal, had occasion to consider a similar revenue neutral situation at the time of clearance of goods from one unit to another of the same company. An appeal in that case was allowed in the case of Anglo French Textiles by relying on the decision of the Larger bench of the Tribunal in the case of Jay Yushin Ltd. reported as [2000 (119) E.L.T. 718 (Tri.-LB)]. It is further noted that the above decision of the Tribunal in the case of Anglo French Textiles has been upheld by the Apex Court 2018 (360) ELT A 301 (SC).

9. By following the above decision, we are of the view that demand raised in the impugned order on empty containers is not maintainable.

10. In view of the above observations, we set aside the impugned order and allow the appeal.

Sd/-  
**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

Sd/-  
**(V. PADMANABHAN)**  
**MEMBER (TECHNICAL)**

Pooja